

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 202003805	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 , Saturday, 05/30/2020 10:00 PM, Saturday, 05/30/2020 10:20 PM	Location of Incident: Church Avenue and Bedford Avenue; Church Avenue and Veronica Place; Unknown intersection	Precinct: 67	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 12:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/02/2020 12:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. POM Ricardo Martinez	19264	950834	067 PCT
4. SGT Michael Cozier	01144	943112	067 PCT
5. POM Brandon Patane	14765	961077	067 PCT
6. POM Miguel Vanbrakle	28743	955616	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Chin	16062	948524	C R C
2. POM Delio Fernandez	16156	957578	067 PCT
3. POM Denis Gamez	07601	949000	067 PCT
4. POM Michael Berndt	00513	961642	C R C
5. POF Christine Roman	18956	959153	067 PCT
6. POM Amine Azeddine	20237	958278	067 PCT
7. POM Anthony Diliberto	15189	926771	042 PCT
8. POM Javier Solis	22730	953425	C R C

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, officers struck individuals with police shields.	
B. Officers	Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, officers used pepper spray against individuals.	
C.SGT Michael Cozier	Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Sergeant Michael Cozier used pepper spray against individuals.	
D.POM Brandon Patane	Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Police Officer Brandon Patane used pepper spray against individuals.	

Officer(s)	Allegation	Investigator Recommendation
E.POM Miguel Vanbrakle	Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Police Officer Miguel Vanbrakle used pepper spray against individuals.	
F.POM Miguel Vanbrakle	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, Police Officer Miguel Vanbrakle used physical force against § 87(2)(b)	
G.POM Ricardo Martinez	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, Police Officer Ricardo Martinez used physical force against § 87(2)(b)	
H. Officers	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers used physical force against § 87(2)(b)	
I. Officers	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers struck § 87(2)(b) with batons.	
J. An officer	Discourtesy: At the intersection of Church Avenue and Veronica Place in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
K. An officer	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers used pepper spray against § 87(2)(b)	
L. An officer	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, an officer struck § 87(2)(b) with a baton.	
M. Officers	Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers struck § 87(2)(b) with a nightstick.	
N. An officer	Abuse: At an unknown location in Brooklyn, an officer threatened § 87(2)(b) with the use of force.	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	

## Case Summary

On June 2, 2020, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On May 30, 2020, § 87(2)(b) joined a protest occurring at the intersection of Bedford Avenue and Church Avenue in Brooklyn. No curfew was in effect on the date of incident. At approximately 9:30 p.m. § 87(2)(b) observed unidentified officers push civilians with shields and deploy pepper spray while at the intersection (**Allegations A and B: Force**, § 87(2)(g)).

Between 9:30 p.m. and 10:20 p.m., § 87(2)(b) moved east on Church Avenue, arriving at the intersection of Church Avenue and Veronica Place at approximately 10:20 p.m. During this time, Sgt. Michael Cozier; PO Brandon Patane, and PO Miguel Vanbrakle of the 67<sup>th</sup> Precinct moved east on Church Avenue, as they did so, they deployed pepper spray (**Allegations C, D and E: Force**, § 87(2)(g)). At this intersection, § 87(2)(b) observed officers identified by the investigation as PO Delio Fernandez, PO Miguel Vanbrakle, PO Brandon Patane, and PO Ricardo Martinez, under the supervision of Sergeant Michael Cozier, all of the 67<sup>th</sup> Precinct, arresting § 87(2)(b) using a physical takedown (**Allegations F and G: Force**, § 87(2)(g)). § 87(2)(b) observed officers who he could not clearly describe striking § 87(2)(b) with batons and with foot strikes (**Allegations H and I: Force**, § 87(2)(g)). While observing this, § 87(2)(b) moved towards where the arrest was taking place, multiple officers then advanced on § 87(2)(b) one of the officers stated, “Get the fuck back,” immediately afterward, a different officer deployed pepper spray (**Allegation J: Discourtesy**, § 87(2)(g)). **Allegation K: Force**, § 87(2)(g)). As the officers closed the distance with § 87(2)(b) one of the officers struck him on the arm with a baton (**Allegation L: Force**, § 87(2)(g)). § 87(2)(b) turned around and went to his knees, after which point officers struck § 87(2)(b) in the head and on his body with batons (**Allegation M: Force**, § 87(2)(g)). After ten to fifteen seconds, the officers stopped and left.

At an intersection § 87(2)(b) did not remember, between 10:45 p.m. and 10:50 p.m., after a brief interaction, an officer discharged a warning arc from his taser while interacting with § 87(2)(b) (**Allegation N: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was not arrested or summonsed.

§ 87(2)(g), § 87(4-b)

Body-worn camera footage was recovered during this investigation and was summarized (BR8-13, BR17-22).

## Findings and Recommendations

**Allegation (A) Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, officers struck individuals with police shields.**

**Allegation (B) Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, officers used pepper spray against individuals.**

§ 87(2)(b) testified that on May 30, 2020, § 87(2)(b) participated in a protest against police brutality in Brooklyn. Between 9:30 p.m. and 10:20 p.m., he moved east with other protesters through the intersection of Church Avenue and Bedford Avenue. While moving through this intersection, he observed officers shoving civilians with police shields and deploying pepper spray. § 87(2)(b) was too far away from these interactions to be able to provide descriptions of the physical choreography of these interactions, provide descriptions of officers or civilians involved in these interactions, or provide any specific information about what possibly caused these interactions.

A review of CTS did not yield duplicate complaints about alleged misconduct that occurred at this specific location (BR24).

On June 25, 2020, the undersigned spoke to § 87(2)(b) allowed the undersigned to review an app on his phone that was linked to his security system, which included exterior-facing cameras. The footage from these cameras was not retained from May 30, 2020, the only footage retained from that date was from inside the store. The undersigned spoke to an unidentified individual § 87(2)(b). This individual stated the store's exterior cameras were not functional. The undersigned spoke to an unidentified individual who managed the § 87(2)(b). This individual stated the deli did not have exterior video cameras. The undersigned also searched in the area for other individuals and locations that may have recovered video footage from the interaction on May 30, 2020. These searches were not successful in locating video footage.

The investigation received limited BWC footage regarding this incident, footage received did not cover this specific portion of the incident. Documents requested from TARU, the 67<sup>th</sup> Precinct, Patrol Borough Brooklyn South, and additional BWC requests were not provided to the investigation.

No duplicate complaints were located, no video footage capturing this specific portion of the incident was found, documents were not provided to the investigation which would allow the investigation to determine the identity of officers who allegedly engaged in these actions. Additionally, the investigation lacks a specific time and descriptions of officers or civilian § 87(2)(b).

**Allegation (C) Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Sergeant Michael Cozier used pepper spray against individuals.**

**Allegation (D) Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Police Officer Brandon Patane used pepper spray against individuals.**

**Allegation (E) Force: At the intersection of Church Avenue and Bedford Avenue in Brooklyn, Police Officer Miguel Vanbrakle used pepper spray against individuals.**

In his testimony to the CCRB, § 87(2)(b) reported that throughout the evening, there were protestors who threw projectiles – described as plastic and glass bottles – at police officers at the rate of one or two bottles every two to three minutes. § 87(2)(b) did not see any bottle strike a police officer. He further reported that civilians at the front of the group yelled towards the civilians towards the middle and rear of the crowd to not throw bottles. At one point, at approximately 10:00 PM, in the vicinity of Church Avenue somewhere east of Bedford Avenue and west of Veronica Place, § 87(2)(b) saw a lit firework thrown into the street, causing some of the flares shot out along the ground.

In his testimony to the CCRB, Sgt. Cozier reported that there were large crowds of civilians gathered north of the intersection on Bedford Avenue and east of the intersection on Church Avenue. After

some period of time, more projectiles began to be thrown at police officers. Sgt. Cozier and other officers organized officers into a group facing east on Church Street. A crowd gathered in front of the people who were throwing bottles, bricks, and incendiary devices at police officers. Members of the crowd also pointed flashlights and camera lights at officers to obstruct officers' ability to determine who was throwing the projectiles, and to complicate officers' efforts to evade projectiles being thrown at them. He identified one of the people shining lights in officers' faces as § 87(2)(b). He stated, "We had flashlights, cameras shined into our eyes so that we couldn't even make out who was throwing these projectiles." Sgt. Cozier testified that after helping to organize officers facing east on Church Avenue, Sgt. Cozier ordered officers to advance. While officers moved east on Church Avenue, civilians refused orders to disperse and officers were struck with projectiles directed at them. Sgt. Cozier stated, "I made the decision because we had to clear out the front row to get to the people who were throwing these objects at us, I would have to move east, proceed east, to get to these people. So instead of using my baton to strike people or get into a situation where it would have gotten confrontational with the front row, I did discharge mace to disperse this large crowd that was obstructing us from getting to the people who were assaulting us behind them." Sgt. Cozier deployed his Oleoresin Capsicum (OC) spray at these civilians. He deployed OC spray to cause civilians to disperse with minimum risk to himself and his officers. After deploying the OC spray, Sgt. Cozier and his officers continued moving east on Church Avenue. After he deployed the OC spray, no civilian approached Sgt. Cozier and requested medical attention. Sgt. Cozier guessed that other officers discharged their OC spray following his example. He did not issue instructions to officers to discharge OC spray. Sgt. Cozier estimated he deployed OC spray between two and four times as he and other officers moved east on Church. Sgt. Cozier stated that OC spray deployment in the context he deployed it was the minimum force possible to deploy. Sgt. Cozier received specialized training in the deployment of O.C. spray in crowd control situations (BR03).

In his testimony to the CCRB, PO Vanbrakle stated that he and other officers re-formed their line, and began to push east on Church Avenue, pushing with their batons when civilians failed to comply with orders. During this movement, Sgt. Cozier withdrew his OC spray and discharged it at a group of civilians who were repeatedly failing to comply with officers' orders to move. At the time that PO Vanbrakle deployed his OC spray, he and other officers were being struck with rocks and bottles. The civilians in front of PO Vanbrakle obstructed officers' ability to reach and detain the civilians throwing objects at officers. PO Vanbrakle received training in the use of OC spray at the police academy, the training was that OC spray was optimally deployed in a well-ventilated, open area, with individuals that pose an imminent physical threat to police officers. PO Vanbrakle stated he had limited options to disperse the crowd in front of him, and that if he had not used OC spray, his other options, to his analysis, all represented higher levels of force use. The options that PO Vanbrakle had available at the time, other than OC spray, included hand strikes, baton pushes, or baton strikes. PO Vanbrakle's deployment of OC spray at this time, based on his analysis, was the minimum possible force he could have deployed to achieve his aims (BR06).

PO Patane and other officers gave the civilians who were blocking their pathway to the individuals throwing objects multiple instructions to move out of the way. After repeated instructions, PO Patane decided to deploy his pepper spray. He deployed his pepper spray to induce civilians who were not complying with lawful orders to disperse. He did not recall how many times he deployed his pepper spray; it may have been one spray or multiple. Roughly simultaneously to his deployment, Sgt. Cozier deployed his OC spray as well. PO Patane did not testify to receiving specialized training in the use of OC spray (BR04).

No video evidence capturing this OC discharge was recovered. Officers testified that they did not activate their BWC as it was unsafe to do so at the time they began moving east on Church Street. As stated above, officers consistently testified to observing civilians throwing bottles, bricks, and

other objects towards police officers, and multiple officers testified to being struck with objects thrown by civilians.

NYPD Patrol Guide Procedure 221-07 discusses the use of O.C. spray. The procedure states: O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force. Avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control. (Members who are specifically trained in the use of O.C. pepper spray for disorder control may use O.C. pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors.) (BR23).

Patrol Guide Procedure 221-01 governing the use of force states that reasonable force can be used to ensure the safety of an officer or other person, to protect life, to place a person in custody, or to prevent escape from custody.

No curfew was in effect on the date of incident.

The investigation credits that the members of the crowd threw projectiles at officers since the presence of projectiles is corroborated by § 87(2)(b)'s statement. Further, the investigation credited that the projectiles placed the officers at risk since at least one officer – PO Patane – was struck by a projectile and sustained an injury.

Sgt. Cozier stated that the officers had difficulty identifying the members of the crowd who were throwing projectiles due to civilians who shined lights in their face. Sgt. Cozier also stated that when he deployed the pepper spray, his aim was to strike the civilians who failed to disperse so that the officers could reach the protestors who were throwing projectiles. PO Vanbrakle and PO Patane stated that the civilians they pepper sprayed had only refused orders to disperse; neither PO Vanbrakle nor PO Patane claimed that the civilians had done anything else.

While Patrol Guide 221-01 establishes general guidelines for the use of force, Patrol Guide 221-07 sets a higher standard for when pepper spray can be deployed, most notably that pepper spray should be used against civilians to gain or maintain control of civilians, against civilians who actively resist arrest or custody, or against civilians who exhibit active aggression. Pepper spray can also be used to prevent civilians from physically injuring others. The procedure notes that pepper spray should never be used in situations that did not require the use of physical force. In this case, none of the officers reported that any of the individuals that they pepper sprayed were actively resisting arrest, exhibited active aggression, or demonstrated that they intended to injure themselves or anyone else. The officers reported that the pepper sprayed individuals blocked their ability to access the protestors who were throwing projectiles and refused orders to disperse, but did not report any other malfeasance. The officers did not state that they intended to arrest the civilians they pepper sprayed or otherwise gain control of them. Instead, the officers were attempting to get to the protestors who were throwing projectiles. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Although Procedure 221-03 notes that there are circumstances where officers can use pepper spray for “disorder control” and Sgt. Cozier stated that he had received training regarding the use of

pepper spray in crowds. § 87(2)(g)

Additionally, PO Patane and PO Vanbrakle stated that they had not received any training about the use of pepper spray to disperse crowds. § 87(2)(g)

**Allegation (F) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, Police Officer Miguel Vanbrakle used physical force against § 87(2)(b)**  
**Allegation (G) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, Police Officer Ricardo Martinez used physical force against § 87(2)(b)**

In his statement to the CCRB, § 87(2)(b) reported that when he was at the southeast corner of the intersection of Veronica Place and Church Avenue, he observed a group of eight to ten police officers surrounding an individual he did not know. This individual was identified by the investigation as § 87(2)(b) was laying on the ground. Four or five of the officers kicked and struck § 87(2)(b) with fists and batons as he lay on the ground (BR01).

The investigation identified § 87(2)(b) via a review of BWC footage via the CCRB statement of PO Vanbrakle.

After conducting searches for § 87(2)(b)'s identity and contact information, and contacting an individual sharing § 87(2)(b)'s name, the investigation did not reach with the individual matching this person's name and description.

PO Martinez's BWC (BR11, summarized BR19), at 00m49s minutes, turns right, and faces § 87(2)(g). § 87(2)(b) Restaurant. Several officers wearing uniforms are in physical contact with § 87(2)(b) who is wearing a white shirt and wearing a red bicycle helmet. § 87(2)(b) moves from the entrance of the restaurant towards the edge of the sidewalk, but it is unclear whether he is moving of his own volition or if he is moving due to the action of the officers. At 00m53s, § 87(2)(b)'s hands appear to be behind his back, but it is unclear whether he is in handcuffs. Between 00m50s and 01m00s, the camera captures PO Martinez placing his hands somewhere on the upper portion of § 87(2)(b) back. No audio is recorded until 01m00s. PO Martinez's camera falls off of his body and continues recording facing upward from the ground at 01m03s. The video stopped capturing specific physical information regarding the contact after being knocked from PO Martinez's body, as the angle of the recording did not capture officers' or civilians' physical movements.

At 01m27s in PO Gamez's BWC (BR10, summarized BR20), captures § 87(2)(b) standing to the left of PO Gamez at approximately 10:17 p.m. with a light emanating from a chest-harness.

Sgt. Cozier testified that earlier on the night of May 30, 2020, § 87(2)(b) had shined a high-power light at officers. This light disrupted officers' ability to identify projectiles being thrown at officers, as well as officers' ability to determine which civilians were throwing projectiles, as well as officers' ability to evade thrown projectiles. § 87(2)(b) had, earlier, evaded capture. At the intersection of Church Avenue and Veronica Place, Sgt. Cozier identified § 87(2)(b) as the perpetrator of this action.

Sgt. Cozier instructed his officers to arrest § 87(2)(b) by stating, “Get him, right there.” Sgt. Cozier did not address this order to any specific officer. Officers approached § 87(2)(b) maneuvered him onto the ground, and placed him in handcuffs. Sgt. Cozier did not recall the physical process by which officers got § 87(2)(b) from standing to being on the ground. Sgt. Cozier did not recall how many officers took § 87(2)(b) to the ground. Sgt. Cozier did not recall if § 87(2)(b) did anything to physically resist officers’ attempts to him or take any action to prevent himself from getting arrested. As officers pushed east on Church, they arrived at the intersection of Church Avenue and Veronica Place. At this intersection, in front of an eatery, Sgt. Cozier saw § 87(2)(b) standing in a doorway. The crowd had largely dispersed from the immediate vicinity. Sgt. Cozier instructed his officers to arrest § 87(2)(b) by stating, “Get him, right there.” Sgt. Cozier did not address this order to any specific individual. Officers approached § 87(2)(b) maneuvered him onto the ground, and placed him in handcuffs. Sgt. Cozier did not recall the physical process by which officers got § 87(2)(b) from standing to being on the ground. Sgt. Cozier did not recall how many officers took § 87(2)(b) to the ground. Sgt. Cozier did not recall if § 87(2)(b) did anything to physically resist officers’ attempts to him or take any action to prevent himself from getting arrested. Sgt. Cozier’s BWC was not activated during this arrest. Sgt. Cozier did not think to activate his BWC; the decision to not activate was because § 87(2)(b) had run before, and time was crucial in successfully apprehending § 87(2)(b). Sgt. Cozier did not have time to activate his BWC prior to apprehending § 87(2)(b) due to the spontaneity of his observation of § 87(2)(b). Sgt. Cozier did not recall if projectiles were coming towards officers at this point (BR03).

PO Vanbrakle testified that he and PO Martinez approached § 87(2)(b) at Sgt. Cozier’s instructions. As they approached, they issued instructions to § 87(2)(b) to turn around and place his hands behind his back. § 87(2)(b) did not comply. PO Vanbrakle placed his hands on one of § 87(2)(b)’s arms, and attempted to pull it behind § 87(2)(b)’s back to place him in handcuffs. § 87(2)(b) tensed his arm muscles and moved his body away from officers, to attempt to evade being placed in handcuffs. PO Vanbrakle and PO Martinez took § 87(2)(b) to the ground. PO Vanbrakle did not use hand or baton strikes, and he did not observe other officers use hand or baton strikes (BR06). PO Vanbrakle did not activate his BWC because he the immediacy of the action did not allow him time to safely do so.

PO Martinez did not recall being involved in the arrest of § 87(2)(b). After being shown video footage, PO Martinez stated that he believed his camera had activated accidentally, and that he did not activate his camera intentionally at that time. PO Martinez recalled that he observed officers physically engage a civilian identified by the investigation as § 87(2)(b) who had failed to comply with orders to disperse. PO Martinez moved towards the officers to assist them in arresting the civilian. PO Martinez held the civilian’s shirt by the shoulder and pushed the civilian down. The civilian tensed his arms but did not do anything else physically. PO Martinez recalled that the takedown was a controlled takedown. PO Martinez’s camera fell off. Immediately after § 87(2)(b) was on the ground, PO Martinez left the scene and continued to move east on Church Avenue. PO Martinez stated the arresting officer for the civilian was PO Rambrako. PO Martinez did not recall observing any officer use any additional physical force towards § 87(2)(b) beyond the takedown. PO Martinez did not see any officer strike § 87(2)(b) with a baton while he was on the ground. PO Martinez did not use any force towards § 87(2)(b) beyond assisting in the takedown (BR02).

Repeated queries of the NYPD’s BADS database search did not show that any arrest report was generated regarding § 87(2)(b). No TRI, arrest photo, or medical treatment of prisoner report regarding § 87(2)(b)’s detention was received. A request for the 67<sup>th</sup> Precinct command log was not fulfilled by IAB.

While the investigation located BWC footage depicting § 87(2)(b) with a light emanating from a harness on his chest, there was no footage depicting § 87(2)(b) shining his flashlight into Sgt. Cozier’s and other officers’ eyes. Nonetheless, the investigation concludes that Sgt. Cozier



instructed officers to arrest § 87(2)(b) and that officers employed a forcible takedown while effecting the arrest.

§ 87(2)(b) did not provide testimony about how § 87(2)(b) came to be on the ground or the circumstances surrounding how he was brought to the ground, and the investigation did not obtain any testimony from § 87(2)(b). The investigation only obtained one BWC file that depicted the apprehension of § 87(2)(b). The footage only captured a portion of the interaction, and did not include footage depicting how § 87(2)(b) was brought to the ground, nor did it provide meaningful detail about the presence or scope of any resistance § 87(2)(b) offered to the officers' attempts to arrest him. The testimony provided by PO Vanbrakle's is not inconsistent with the BWC footage, though there is no corroboration to confirm or refute that § 87(2)(b) resisted arrest as alleged.

NYPD Patrol Guide Procedure 221-02 states that members of service will use only the reasonable force necessary to gain control or custody of a subject. It states that in determining whether the use of force is reasonable, members of service should consider the following factors: the nature and severity of the crime/circumstances; the actions taken by the subject; the duration of the action; the immediacy of the perceived threat or harm; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; the number of subjects compared to the number of MOS; the size, age, and condition of the subject in comparison to the MOS; a subject's violent history if known; the presence of a hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant or narcotic which would affect pain tolerance or increase the likelihood of violence (BR07).

Officers testified that § 87(2)(b) fled officers' initial attempts to apprehend him and officers consistently testified actively resisted their attempts to place him in handcuffs. This arrest occurred within the context of ongoing, dynamic protests with numerous civilians in the overall vicinity. BWC footage captured officers' physical contact with § 87(2)(b) but did not clearly capture § 87(2)(b)'s actions or resistance at the time force was used. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (H) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers used physical force against § 87(2)(b)**

**Allegation (I) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers struck § 87(2)(b) with batons.**

As stated above, § 87(2)(b) testified he observed officers kicking § 87(2)(b) and striking him with fists and batons. § 87(2)(b) was not able to be more specific about what § 87(2)(b) was doing, as the lighting conditions, positioning of the officers and § 87(2)(b) and dynamic nature of the encounter obstructed his ability to determine the specific choreograph of the interaction (BR01).

As stated above, § 87(2)(b) was not successfully located by the investigation.

Officers consistently testified that they did not recall using hand strikes, foot strikes, or batons against § 87(2)(b) (BR02-BR06).

Video evidence shows officers physically engaged with § 87(2)(b) as discussed under Allegations F

and G, but does not capture officers using hand, foot, or baton strikes directed at him. This video was not reviewed using specialized video review software as the issue regarding the capture is not the fidelity of the camera, but the angle of the camera relative to officers' positioning (meaning, officers' physical motions are not depicted).

§ 87(2)(g)

**Allegation (J) Discourtesy: At the intersection of Church Avenue and Veronica Place in Brooklyn, an officer spoke discourteously to § 87(2)(b)**

**Allegation (K) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers used pepper spray against § 87(2)(b)**

**Allegation (L) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, an officer struck § 87(2)(b) with a baton.**

**Allegation (M) Force: At the intersection of Church Avenue and Veronica Place in Brooklyn, officers struck § 87(2)(b) with nightsticks.**

§ 87(2)(b) testified that he moved towards where § 87(2)(b) was being arrested. Unidentified officers began moving towards § 87(2)(b). § 87(2)(b) did not have time to begin moving away before the officers were within one to two feet of him. § 87(2)(b) estimated that it took the officers no more than five seconds to close the distance between where they stood initially and himself. § 87(2)(b) faced north on Veronica Place. One of the officers stated, "Get back, get the fuck back." § 87(2)(b) did not have time to move away from the police officers before they physically engaged him. As the officers advanced on him, an officer discharged the pepper spray at § 87(2)(b). The officer may have said, "Get back," prior to deploying the pepper spray. § 87(2)(b) described the officer who discharged the OC spray as a light-skinned female wearing a short sleeved white shirt, with grey or brown short hair, 5'4", with a small frame, in her late 30s-50 years old. This officer carried a thick rubber baton approximately two inches in diameter. He described the officers with the officer who discharged the OC spray as a light skinned/white male in a blue uniform in his early 30s, 5'10", with sturdy build, carrying a thick black rubber baton approximately two inches in diameter, also carrying pepper spray, a black male in a blue uniform in his mid-30s, between 5'8" and 6' tall with a sturdy build, shaved head, and carrying a baton like the others, and a white male 5'8"-6' tall, in his mid-30s to early 40s, carrying a baton like the others. An officer struck § 87(2)(b) on the right side of his chest with their baton, swinging their baton in a downward motion. This swing struck § 87(2)(b) approximately two inches above his right nipple at the edge of his right pectoral muscle. § 87(2)(b) stood still, with his hands hanging on the side of his body, at the moment the officer struck him. He did not believe his fists were clenched. § 87(2)(b)'s shoulders were square with the officers at this moment. Immediately after being struck in the chest, § 87(2)(b) spun his body counterclockwise, and he crouched down, with his body bent over. § 87(2)(b) made this motion to avoid being struck, describing this motion as instinctive. This did not occur as a result of carried momentum from when the officer struck him with the baton. At this point, § 87(2)(b) was looking away from the police officers, and he could not tell which officer was striking him where. § 87(2)(b) looked towards the ground. § 87(2)(b) did not know if his feet were moving as the officers continued to strike him with batons. An officer struck § 87(2)(b) once in the back of his head almost immediately after turning around. § 87(2)(b) felt the strike to the head behind his right ear, with the edge of a baton. § 87(2)(b) was not able to be more specific about the order of subsequent strikes to his body. The officers struck § 87(2)(b) approximately eight more times to his upper arms and back. § 87(2)(b) did not say anything as the officers struck him. § 87(2)(b) did not recall the officers making any statements as they struck him. § 87(2)(b) estimated the officers struck him with batons for eight to ten seconds. The total time of the interaction, between the discharge of the

pepper spray and the officers last strike to his arms or body, lasted between twelve and fifteen seconds. § 87(2)(b) stated he suffered a bruise to his head. After discharging OC spray and striking § 87(2)(b) officers did not attempt to obtain medical attention for § 87(2)(b). Officers did not arrest, detain, or obtain any information from § 87(2)(b). After officers discharged OC spray at § 87(2)(b) and struck him with batons, § 87(2)(b) left the immediate vicinity, remained further south on Veronica place for some period of time, then proceeded to walk home (BR01).

The officers interviewed regarding this case consistently testified that they did not move south on Veronica Place or take action directed at any civilians on Veronica Place, other than § 87(2)(b) (BR02-BR06).

No video footage obtained by the investigation captures the area where this incident allegedly took place. The investigation obtained BWC from officers who moved past this location at a time period roughly contemporaneous with the time § 87(2)(b) stated the incident took place, this BWC does not capture interactions between police officers and civilian taking place anywhere on Veronica Place other than the interaction described above (BR17-23, summarized BR08-BR13). TARU footage was not obtained for this location. Calls to local businesses did not yield positive results for video footage (BR25-BR30). On June 25, 2020, conducted fieldwork in the vicinity of Church Avenue and Veronica Place in Brooklyn. The undersigned spoke to § 87(2)(b) § 87(2)(b) allowed the undersigned to review an app on his phone that was linked to his security system, which included exterior-facing cameras. The footage from these cameras was not retained from May 30, 2020, the only footage retained from that date was from inside the store. The undersigned spoke to an unidentified individual who managed § 87(2)(b) § 87(2)(b). This individual stated the store's exterior cameras were not functional. The undersigned spoke to an unidentified individual who managed § 87(2)(b) § 87(2)(b). This individual stated the deli did not have exterior video cameras. The undersigned also searched in the area for other individuals and locations that may have recovered video footage from the interaction on May 30, 2020. These searches were not successful in locating video footage (BR31).

The investigation did not receive documents from the 67<sup>th</sup> Precinct, IAB, and Patrol Borough Brooklyn South despite multiple follow-up requests. Additionally, follow-up requests for additional BWC were not fulfilled. The investigation received negative results regarding a request for zone, post, and sector maps from Patrol Borough Brooklyn South (BR46).

As stated above, the investigation searched for and did not locate video footage that captured the specific incident location that § 87(2)(b) stated this took place at. The video footage obtained by this investigation as well as investigations concurrent to this one occurring at or near the same overall incident did not yield video that captured this specific incident location. Documents requested by the investigation were either not fulfilled by the NYPD or yielded negative results. Testimony, as stated above, was consistent in officers not observing interactions between officers and civilians south of the intersection of Veronica Place and Church Street. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (N) Abuse of Authority: At an unknown location, an officer threatened § 87(2)(b) with the use of force.**

On his walk home, § 87(2)(b) observed a group of six police officers standing at the northwestern corner of Flatbush Avenue and either Martense Street or Linden Boulevard. § 87(2)(b) observed these officers between 10:45 PM and 10:50 PM. The officers stood in the crosswalk. The officers' backs were to § 87(2)(b) when he approached them. § 87(2)(b) was walking west, coming from the east. All six officers wore standard uniforms, not riot gear. As § 87(2)(b) got between one quarter and halfway through the intersection, he loudly asked the officers if he could go through where they stood. An officer turned around, looked at § 87(2)(b) and in a friendly manner, said, "Yeah sure, get home, it's not safe out here." Other than this officer, none of the officers turned around. § 87(2)(b) then walked through the group. § 87(2)(b) walked six to eight feet past the group of officers. He stopped, turned around to face the group of officers, and said, "Some of your colleagues beat me up tonight." § 87(2)(b) believed that an officer then drew his conducted energy weapon ("CEW", referred to be § 87(2)(b) as a "taser"). The officer drew his CEW with his right hand. The officer took two steps towards § 87(2)(b) and 'buzzed' the CEW. § 87(2)(b) walked away without further interaction with these officers. The officer did not point the taser at § 87(2)(b) (BR01).

Linden Boulevard is one block north of Martense Street in Brooklyn. Martense street is approximately a block and a half north of the incident location. This location is approximately two blocks west and two or three blocks north (two blocks for Martense Street, three blocks for Linden Bouelvard) of the incident location.

§ 87(2)(b) was not able to provide a specific location for where this incident took place. As stated above regarding Allegations L-O, the investigation either did not receive or was unable to determine via documents the location of specific officer deployments. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- Sergeant Patane has been a member of service for four years, and has been the subject of two CCRB complaints and two allegations, none of which are substantiated.

- PO Vanbrakle has been a member of service for seven years, and has been the subject of fourteen CCRB complaints and 34 allegations, none of which were substantiated.
  - Five allegations of physical force have been pleaded against PO Vanbrakle, though none of the allegations were substantiated. Physical force was exonerated in 201502958, 201709873, and 201802626, and unsubstantiated in 201707238.
- PO Fernandez has been a member of service for five years, and has been the subject of four CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Martinez has been a member of service for nine years and has been the subject of three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Cozier has been a member of service for thirteen years and has been the subject of ten CCRB complaints and 21 allegations.
  - 201300682 involved a substantiated allegation of a retaliatory summons against Sgt. Cozier. The Board recommended instructions and the NYPD imposed instructions.
  - 201905210 involved substantiated allegations of abuse of authority – entry of premises and abuse of authority – search of premises. The board recommended formalized training and the NYPD imposed formalized training.
  - § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR14).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR45).
- As of October 15, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR16). A follow-up request was submitted May 24, 2021 with the name § 87(2)(b). This request is pending, and results will be added to the case file upon its receipt.

Squad No.: 12

Investigator: <u>Zachary Herman</u>	Investigator <u>Zachary Herman</u>	<u>05/24/2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Carlmais Johnson</u>	IM <u>Carlmais Johnson</u>	<u>November 29, 2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date

